

August 6, 2008

TO: Teresa Parsons
Director's Review Program Supervisor

FROM: Kristie Wilson
Director's Review Investigator

RE: **Erik Nedergard v Department of Natural Resources (DNR)**
Allocation Review Request No. ALLO-07-070

On June 24, 2008, a Director's Review meeting took place by telephone conference call concerning the allocation of Erik Nedergard's position. Present during the telephone conference call were Erik Nedergard, DNR; Kathleen Oest, WPEA; Dave Driskill, DNR Supervisor; Marty Graf, DNR Human Resource Office; and myself.

Investigator Finding

My review finds that Mr. Nedergard's position is properly allocated as a Property and Acquisition Specialist 2 (PAS 2).

Background

On July 9, 2007 Mr. Graf issued a reallocation letter to Mr. Nedergard stating that his position has been reallocated from an Engineering Aide 3 to a PAS 2. Mr. Graf explained in his letter that the allocation decision was based on a review of Mr. Nedergard's assigned duties described in the Position Description Form (Exhibit B-3). On August 7, 2007 Marian Gonzales WPEA, on behalf of Mr. Nedergard, filed a request for a Director's review (Exhibit A-1). On August 27, 2007 Kathleen Oest, WPEA sent an email (Exhibit A-3), on behalf of Mr. Nedergard, requesting Mr. Nedergard's position be reallocated to a Property and Acquisition Specialist 3 (PAS 3).

Summary of Mr. Nedergard's perspective

Mr. Nedergard explained that he works independently in the Aquatics Division and is the custodian of the aquatic plate records. Mr. Nedergard states his main function is determining ownership of 4,000 aquatic plates including managing and updating records. Mr. Nedergard states he is responsible for researching the ownership plates, reviewing deeds, and researching the history of the sites.

Mr. Nedergard fulfills public disclosure requests by providing title deeds to county auditors and assessors, attorneys, and private parties.

Mr. Nedergard states that although navigability is represented as only 5% of his job duties it is the most complex and difficult part. Mr. Nedergard asserts that his position requires knowledge of session laws, court cases regarding ownership and navigability, Indian treaties before statehood and their relationship to state owned aquatic lands.

Mr. Nedergard feels that the nature of his position does not align itself with his co-workers as the two job functions (Uplands and Aquatics) are not related at all. Mr. Nedergard asserts that his position is required to use complex drafting skills to correctly portray each and every encumbrance that crosses or extends out into state owned aquatic lands.

Mr. Nedergard believes his position should be a PAS 3 due to the complexity of duties.

Comments from Mr. Driskill (Supervisor)

Mr. Driskill stated that Mr. Nedergard does a consistently great job and does not require much supervision. Mr. Driskill affirmed that requests for title plate research come directly to Mr. Nedergard.

Mr. Driskill explained the different levels of PAS's within his division. The PAS 1 position gathers information on state owned property and creates reports. In addition, the PAS 1 position locates the property the state trust owns and determines who has rights over that property. This position has the least complexity. The PAS 3 performs complex research in title clearance, negotiations, determines easements, and the employee has a law degree. This position handles all of the property the state buys and determines who has rights.

DNR's Rationale

DNR agrees that Mr. Nedergard's position description form (PDF) (Exhibit B-3) is accurate and has not changed much since January 2006 when the PAS series was created.

Since DNR has allocating authority they looked at the job duties of Mr. Nedergard's position. DNR asserts that Mr. Nedergard's primary job duties are to examine titles and records to clarify ownership. Because Mr. Nedergard's position is in aquatics and has higher complexities than the other PAS 1 positions, Mr. Graf determined that Mr. Nedergard's position best fit in the PAS 2 job class instead of the PAS 1.

DNR contends that Mr. Nedergard does some drafting but not the majority of the time. DNR feels that Mr. Nedergard does play a major role in his position but they do not base allocations on that.

DNR feels that the PAS 2 classification best fits Mr. Nedergard's current position.

Reason and Basis for Finding

The definition for PAS 3 states:

Positions typically perform complex duties relating to vacant, residential, commercial, agricultural, public utility, exempt, recreational, and/or industrial properties. Areas of responsibility include negotiations, acquisitions, relocation assistance, property management, title examination, leasing, appraisals, audits, disposal, inspections, and/or lands and access maintenance. Some positions may be responsible for administering a statewide program such as senior citizen tax deferral or public utility district privilege tax.

At this level, complex assignments involve extensive title clearance, severance issues and/or benefits, follow-up to negotiations which have reached an impasse; investigation and disposition of claims involving unconstitutional takings; relocations involving more complex issues (i.e. retail businesses, farms, last resort housing); preparation or review of relocation plans, benefit computations; moving cost estimates; dual-premise appraisals, and/or appraisal of income producing properties.

Positions performing property tax audits work a majority of time on valuation of commercial, agricultural, light manufacturing, industrial, public utility property, or exempt property. Some appraisal positions require at least fifty percent of their time on commercial or public utility appraisals which include high-rise apartments, condominiums and office buildings; motels, hotels and restaurants; shopping centers; strip malls; warehousing and shipping terminals; medical centers; hospitals, light manufacturing plants such as soft-drink bottling plants; clothing; boat and mobile home manufacturers; or secondary private car and public utility companies. Positions are normally assigned to a region, major metropolitan area, or headquarters.

Mr. Nedergard describes his main job duties as maintaining aquatic plate records. This includes determining ownership of 4,000 aquatic plates including managing and updating records.

Some job duties identified in the PAS 3 class specification state (in part):

- Negotiates real estate acquisitions;
- Negotiates the sale or rental of department properties;
- Prepares legal descriptions and documents for the acquisition, disposal, and rental of real property;
- Participates in pre-trial proceedings and testifies in court including testimony as expert valuation witness;

Mr. Nedergard agrees that he does not perform negotiations or appraisals. Mr. Nedergard states that he does not attend court proceedings.

The definition for Property and Acquisition Specialist 2 states:

Positions apply laws, methods, and principles covering real estate transactions, negotiations, relocation, appraisals, audits, acquisitions, and/or valuation of residential, commercial, land, and agricultural properties.

Incumbents work with limited supervision and handle non-complex assignments such as assisting on relocation in project acquisition of a single family residence, total takes, strip acquisition; assisting in property management by determining lease values, preparing and maintaining property files; performing housing inspections, or appraising properties that typically don't involve questions about benefits or significant damages for those that need an income approach or cost approach for solution. Positions typically appraise whole properties or simple strip takes; appraisals of land, single and multi-family residences, apartment complexes, neighborhood businesses and agricultural properties. Positions can also perform audits and appraisals of agricultural, small commercial and manufacturing personal property or exempt property applicants. Assigned duties are completed independently and work is subject to periodic review.

The majority of the time Mr. Nedergard's position is responsible for title research, consulting with agency surveyors regarding legal descriptions, advising and making recommendations to management on ownership, and/or legal description conflicts.

Although Mr. Nedergard's position has some complexity, I believe his position still falls within the PAS 2 classification. The complex issues he identified do not reach the level of complexity envisioned in the PAS 3 job classification.

As previously noted by the Personnel Resources Board (PRB), the guidance provided in the Department of Personnel's Classification and Pay Administrative Guide establishes that the following standards are primary considerations in allocating positions:

- a) Category concept (if one exists).
- b) Definition or basic function of the class.
- c) Distinguishing characteristics of a class.
- d) Class series concept, definition/basic function, and distinguishing characteristics of other classes in the series in question.

After reviewing the documentation and comments from all parties with regard to Mr. Nedergard's assigned duties and responsibilities, I conclude the PAS 2 classification best describes Mr. Nedergard's position.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Enclosure: Exhibit List